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6 Attorneys for Defendants
NBTY, INC., NATURE'S BOUNTY,
7 INC., REXALL SUNDOWN, INC., and
COSTCO WHOLESALE CORPORATION
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 PAIGE PETKEVICIUS, on Behalf of
Herself and All Others Similarly
12 Situated,

13 Plaintiff,
14

15 v.

16 NBTY, INC.; NATURE'S BOUNTY,
17 INC., REXALL SUNDOWN, INC.; and
DOES 1-100,
18

19 Defendants.
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21 TATIANA KOROLSHTEYN, on behalf
of herself and all others similarly
22 situated,

23 Plaintiff,
24

25 v.

26 COSTCO WHOLESALE
CORPORATION and NBTY, INC.,
27

28 Defendants.

CASE NO.: 3:14-CV-02616-CAB-RBB
CASE NO.: 3:15-CV-00709-CAB-RBB

**DECLARATION OF SUSAN
MITMESSER**

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CASE NO.: 3:14-CV-02616-CAB-RBB
CASE NO.: 3:15-CV-00709-CAB-RBB

1 **DECLARATION OF SUSAN H. MITMESSER**

2 I, Susan H. Mitmesser, declare:

3 1. I am currently employed by The Nature's Bounty Co. f/k/a NBTY,
4 Inc. ("NBTY"). My current title is Senior Director of Nutrition and Scientific
5 Affairs. I make this declaration of my own personal knowledge. If I were called
6 to testify, I could and would testify competently to the matters herein.

7 2. There are hundreds of publicly available pieces of information
8 regarding ginkgo biloba, including primary studies, meta analyses, and reviews of
9 the scientific literature. NBTY's nutrition research team, which is presently
10 comprised of eight (8) scientists, spend hundreds of hours combing through all of
11 the publicly available research to determine what claims would be supported by
12 this information.

13 3. These scientists then collect and retain the specific studies in a
14 "structure function file" or "substantiation file"—i.e., a file which would
15 substantiate the claims on the label. Therefore, while each individual study might
16 be publicly available, the unique collection that NBTY's research team has
17 amassed is not.

18 4. Rather, that collection represents a significant amount of investment
19 by NBTY in the way of money paid to the nutrition research team (hundreds of
20 thousands of dollars each year) who, in turn, spend hundreds of hours of research
21 time analyzing these studies.

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1 5. If NBTY's substantiation files were made publicly available, its
2 competitors would essentially get a "free" copy of NBTY's substantiation files and
3 would have the research to substantiate claims for their own ginkgo biloba
4 products without having invested a single penny or a single moment in performing
5 their own research.

6 I declare under penalty of perjury under the laws of the United States that
7 the foregoing is true and correct.

8 Executed this 10th day of February 2017, at Hillsdale, Michigan.

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A handwritten signature in black ink, appearing to read "Susan H. Mitmesser", is written over a horizontal line.

Susan H. Mitmesser